

REMARKS/ARGUMENTS

Applicant respectfully requests further examination and reconsideration in view of the instant response. The claims remaining in the present application are Claims 1-53. Claims 1-53 are rejected. Claims 1-8, 14-34, 41, 43, 44, 46, 47, 49, 51 and 52 have been amended. No new matter has been added. Support for the claim amendments can be found at least at Table 4.

CLAIM REJECTIONS – 35 U.S.C. §101

Claims 1-53

Claims 1-53 are rejected under 35 U.S.C. §101 because “the claimed invention is directed to non-statutory subject matter” (page 2).

In regards to Claims 1 and 27, the claims are directed towards “software steps and fails to ties to another statutory class within the body of the claim” (page 2). Claims 1 and 27 have been amended to include, in part, “[a] computer-implemented method” and a “data processing system” including “a processor.” Applicants understand *In re Bilski* (88 USPQ 2d 1385 CAFC (2008)) to hold that a process under 35 U.S.C. §101 must (1) be tied to a machine or (2) transform underlying subject matter. Applicants respectfully submit that at least a data processing system including a processor (e.g., a computer) is a machine. Therefore, Applicants respectfully submit that Claims 1 and 27 are directed towards patentable subject matter, and thus overcome the rejection under 35 U.S.C. §101. Moreover, Applicants respectfully submit that Claims 2-8, 21, 22, 28-33, 44, 49, 47 and 52

also overcome the rejection under 35 U.S.C. §101 as being dependent on Claims 1 and 27, respectively, that overcome the instant rejection.

In regards to Claims 8 and 34, the claims fail “to provide any hardware framework, thus, a system that comprising purely software framework is considered software per se” (page 2). Claims 8 and 34, as amended, state, in part, a “processing system”...comprising... “a processor”. One of ordinary skill in the art would intuitively understand that “a processing system” is a computer that processes instructions via a processor (e.g., plurality of processing systems in Figs 1 and 3 in the instant Application). However, to explicitly capture this statutory concept, the processing system also includes “a processor,” as claimed. Accordingly, Applicants understand a processing system including a processor to NOT be software per se. Therefore, Applicants respectfully submit that Claims 8 and 34 are directed towards patentable subject matter, and thus overcomes the rejection under 35 U.S.C. §101. Moreover, Applicants respectfully submit that Claims 9-13, 23, 24, 35-40, 42, 45, 48, 50 and 53 also overcome the rejection under 35 U.S.C. §101 as being dependent on Claims 8 and 34, respectively, that overcomes the instant rejection.

In regards to Claim 14, the claim is “interpreted as signal per se” (page 3). Claim 14 has been amended to recite “[a] computer-usable storage medium containing instructions embodied therein that when executed cause a computer system to perform a method for the deployment of one or more data processing systems.” Therefore, Applicants respectfully submit that Claim 14 is directed towards patentable subject matter, and thus overcomes the rejection under 35 U.S.C. §101. Moreover, Applicants respectfully submit

that Claims 15-20, 25, 26, 43, 46 and 51 also overcome the rejection under 35 U.S.C. §101 as being dependent on Claim 14 that overcomes the instant rejection.

CLAIM REJECTIONS – 35 U.S.C. §102(e)

Claims 1-53

The instant Office Action states that Claims 1-53 are rejected under 35 U.S.C. §102(e) as being anticipated by Maddux et al. (US 2002/0124245), hereinafter “Maddux.” Applicants respectfully submit that the embodiments of the present invention as recited in Claims 1-53 are not anticipated by Maddux for at least the following rationale.

Claim 1 recites an embodiment of the present invention (emphasis added):

A computer-implemented method to deploy one or more data processing systems, comprising:

- providing a plurality of rules that determine the deployment information that are available to deploy on the one or more data processing systems and deployment action on the one or more data processing systems, wherein said data processing systems comprise a processor;

- capturing deployment information from a reference data processing system to deploy on said one or more data processing systems, wherein said deployment information is stored in a memory;

- selecting said one or more data processing systems;

- selecting, by a user, a package of said deployment information to be deployed on said one or more data processing systems, wherein said deployment information to be deployed on said one or more data processing systems comprises a software image and hardware configuration image; and

- intelligently deploying said one or more data processing systems upon receiving a command from the user if there is a match between attributes of said package and attributes of said one or more data processing systems, wherein the user selects the package attributes and data processing systems attributes to include and exclude for matching, wherein said intelligently deploying is based on said deployment information that was captured, and includes referencing said package of said deployment information that is stored in said memory, and alternatively, suspending deployment of said one or more data processing

systems if there is no match between said attributes of said package and said attributes of said one or more data processing systems.

Independent Claims 8, 14, 27 and 34 recite similar embodiments. Claims 2-7, 9-13, 15-26, 28-33 and 35-53 also include these embodiments.

MPEP §2131 provides:

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... “The identical invention must be shown in as complete detail as is contained in the ... claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

First, Applicants respectfully submit that Maddux does not anticipate “said deployment information to be deployed on said one or more data processing systems comprises a software image and hardware configuration image,” as claimed (emphasis added). Applicants understand Maddux to disclose (1) deployment of only software and (2) deployment via a file based system and not via image capturing. In particular, Maddux discloses “deployment of complex software or operating system application using native deployment routines” (emphasis added; abstract). Also, “Deployment Master is a file based installation application, not an imaging or cloning application” (emphasis added; 0138). In contrast, Applicants claim “said deployment information to be deployed on said one or more data processing systems comprises a software image and hardware configuration image” (emphasis added).

Second, Applicants agree with the instant Office Action that asserts “Maddux did not explicitly disclosing “alternatively, suspending deployment of said one or more data processing systems if there is no match between said attributes of said package of said attributes of said one or more data processing systems” (page 4).

Applicants respectfully submit that Maddux does not satisfy a *prima facie* case of anticipation under 35 U.S.C. §102(e). Therefore, Applicants respectfully submit that Maddux does not anticipate the claimed embodiments of the present invention as recited in independent Claims 1, 8, 14, 27 and 34, that these claims overcome the rejection under 35 U.S.C. § 102(e), and that these claims are thus in a condition for allowance. Applicants respectfully submit that Maddux also does not anticipate the additional claimed features of the present invention as recited in Claims 2-7, 9-13, 15-26, 28-33 and 35-53 that depend from Claims 1, 8, 14, 27 and 34, respectively. Therefore, Applicants respectfully submit that Claims 2-7, 9-13, 15-26, 28-33 and 35-53 also overcome the rejection under 35 U.S.C. § 102(e), and are in a condition for allowance as being dependent on an allowable base claim.

CLAIM REJECTIONS – 35 U.S.C. §103(a)

Claims 1-53

Claims 1-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maddux in view of Moshir et al. (US 2005/0257214), hereinafter “Moshir.” Applicants respectfully submit that the embodiments of the present invention as recited in Claims

1-53 are patentable over the combination of Maddux and Moshir for at least the following rationale.

“As reiterated by the Supreme Court in *KSR*, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries” including “[a]scertaining the differences between the claimed invention and the prior art” (MPEP 2141(II)). “In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious” (emphasis in original; MPEP 2141.02(I)).

Applicants note that “[t]he prior art reference (or references when combined) need not teach or suggest all the claim limitations, however, Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art” (emphasis added; MPEP 2141(III)).

Moreover, Applicants respectfully note that “[a] prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention” (emphasis in original; MPEP 2141.02(VI); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984)).

Applicants respectfully submit that Maddux does not suggest or teach “said deployment information to be deployed on said one or more data processing systems comprises a software image and hardware configuration image,” as claimed (emphasis added). Applicants respectfully submit that Maddux teaches away from “said deployment information to be deployed on said one or more data processing systems comprises a software image and hardware configuration image,” as claimed (emphasis added). Applicants understand Maddux to disclose (1) deployment of only software and (2) deployment via a file based system and not via image capturing. In particular, Maddux discloses “deployment of complex software or operating system application using native deployment routines” (emphasis added; abstract). Also, “Deployment Master is a file based installation application, not an imaging or cloning application” (emphasis added; 0138). By disclosing (1) deployment of only software and (2) deployment via a file based system and not via image capturing, Applicants respectfully submit that Maddux teaches away from “said deployment information to be deployed on said one or more data processing systems comprises a software image and hardware configuration image,” as claimed (emphasis added).

Moreover, Moshir does not overcome the deficiencies of Maddux. Applicants understand Moshir to teach or suggest a “storage media are provided for discover software updates... (abstract). In particular, Moshir does not teach or suggest “said deployment information to be deployed on said one or more data processing systems comprises a software image and hardware configuration image,” as claimed (emphasis added).

Applicants respectfully submit that the combination of Maddux and Moshir does not satisfy a *prima facie* case of obviousness under 35 U.S.C. §103(a). Therefore, Applicants respectfully submit that combination of Maddux and Moshir does not render obvious the claimed embodiments of the present invention as recited in independent Claims 1, 8, 14, 27 and 34, that these claims overcome the rejection under 35 U.S.C. § 103(a), and that these claims are thus in a condition for allowance. Applicants respectfully submit that the combination of Maddux and Moshir also does not render obvious the additional claimed features of the present invention as recited Claims 2-7, 9-13, 15-26, 28-33 and 35-53 that depend from Claims 1, 8, 14, 27 and 34, respectively. Therefore, Applicants respectfully submit that Claims 2-7, 9-13, 15-26, 28-33 and 35-53 also overcome the rejection under 35 U.S.C. § 103(a), and are in a condition for allowance as being dependent on an allowable base claim.

CONCLUSION

In light of the above remarks, Applicants respectfully request reconsideration of the rejected claims.

Based on the arguments presented above, Applicants respectfully assert that Claims 1-53 are in condition for allowance.

The Examiner is invited to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present Application.

Respectfully submitted,

WAGNER BLECHER LLP

Date: 01/27/2010

/John P. Wagner, Jr./
John P. Wagner, Jr.
Reg. No. 35,398
123 Westridge Drive
Watsonville, CA 95076 USA
(408) 377-0500